

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

CARRIE BRIGNER, as Next Friend
of HANNAH BRIGNER-TAYLOR, a minor,

Plaintiff,

v

MICHAEL MEKARU, M.D., TRACY
J. WINTERS, M.D., MECOSTA COUNTY
MEDICAL CENTER, PEDIATRIC
ASSOCIATES OF BIG RAPIDS, P.C., Jointly
and Severally,

Defendants. /

C.A. No: 1:15-cv-757

State Court Case No.: 15-22898-NH

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John R. LaParl, Jr. (P39549)
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KITCH DRUTCHAS WAGNER
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NOTICE OF REMOVAL BY DEFENDANT

TO: UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

NOW COMES Defendant, MECOSTA COUNTY MEDICAL CENTER, by and
through its attorneys, KITCH DRUTCHAS WAGNER VALITUTTI & SHERBROOK, and
hereby respectfully submits this Notice of Removal for the above-captioned case, and
as grounds for the removal states:

1. On May 28, 2015, Carrie Brigner, as Next Friend of Hannah Brigner-Taylor, a Minor, both Medicaid recipients, filed a Complaint in the State of Michigan, Circuit Court for the County of Mecosta, against Defendant, Mecosta County Medical Center (See Attached - Exhibit A: Plaintiff's Complaint [State Court Action]), alleging medical malpractice arising out of healthcare provided by the Medicaid authorized practitioners.

2. Defendant, Mecosta County Medical Center was served with a copy of Plaintiff's Complaint on June 30, 2015.

3. This case is being removed within thirty (30) days after service of the claim for relief upon which the action is based or within 30 days of service of the Summons.

4. Though Defendant, Mecosta County Medical Center, has filed its Answer and Affirmative Defenses [including federal sovereign immunity] to Plaintiff's Complaint, no proceedings have been had in the State Court Action.

5. Defendant, Mecosta County Medical Center, is a state licensed healthcare facility which is authorized to provide healthcare to persons eligible to receive Medicaid/Medicare through the Michigan Department of Community Health, which is a Department of Health and Human Services delegate.

6. Defendant, Mecosta County Medical Center, states that removal of the entire Complaint is proper under the provisions of Title 28, United States Code, § 1442(a)(1), as it is a civil action commenced in a State court that may be removed to the District Court of the United States as it is directed against the United States or any agency thereof or any officer (or any person acting under that officer) of the United

States or of any agency thereof, for or relating to any act under color of such office or on account of any right, title or authority claimed.

7. As an approved Medicaid/Medicare provider, Defendant herein and its agents are required to follow Medicaid/Medicare directives and are entitled to immunity because this Defendant and its agents are expected to comply with utilization and professional protocols decided on by federally designated Quality Improvement Organizations ("QIO").

8. Defendants are, therefore, entitled to blanket immunity as provided by 42 U.S.C.A. §1320c-6(b)'s protective function.

9. The proper interpretation of 42 U.S.C.A. §1320c-6(c)(1) and (2) is properly before this Court as a federal question.

10. Title 28 U.S.C.A. §1331, [Federal Question Jurisdiction] gives this Court jurisdiction to interpret Federal law and to decide federal jurisdictional and substantive immunity issues.

11. Removal is proper pursuant to Title 28, United States Code, § 1331, Federal Question Jurisdiction; since 42 U.S.C. §1320c-6(c)(1) and (2) provide immunity to actual healthcare providers who follow Medicaid/Medicare treatment directives.


12. A copy of this Notice will be served on all adverse parties as required by law.

13. A copy of this Notice will be filed with the Clerk of the Circuit Court for the County of Mecosta as provided by law.

WHEREFORE, Defendant, Mecosta County Medical Center, gives notice that this action is, therefore, removable to this Court because it is within this Court's original jurisdiction.

Respectfully submitted,

KITCH DRUTCHAS WAGNER
VALITUTTI & SHERBROOK

By: 
Ralph F. Valitutti, Jr. (P26128)
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Dated: July 23, 2015

AFFIDAVIT OF COUNSEL

STATE OF MICHIGAN)

) SS

COUNTY OF MACOMB)

RALPH F. VALITUTTI, JR., being first duly sworn, deposes and says that he is a member of the law firm of KITCH, DRUTCHAS, WAGNER, VALITUTTI & SHERBROOK, attorneys for Defendant, Mecosta County Medical Center, herein; that he has read the foregoing Notice of Removal and he knows the contents thereof, and the same is true to the best of his knowledge, information and belief.



RALPH F. VALITUTTI, JR. (P26128)

Subscribed and sworn to before me
this 23 day of July, 2015.

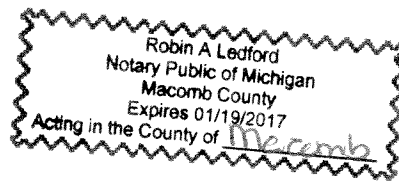


_____, Notary Public

Macomb County, Michigan

My Commission Expires: 1-19-2017

Acting in the County of Macomb.



CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2015, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all registered parties.

/s/ Carolyn E. Noble
Carolyn E. Noble (P77019)
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